

# TENNESSEE REGULATORY AUTHORITY

Melvin Malone, Chairman  
Lynn Greer, Director  
Sara Kyle, Director



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REGULATORY AUTH.

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460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

August 9, 1999

EXECUTIVE SECRETARY

## **MEMORANDUM**

**TO:** Melvin Malone, Chairman  
Lynn Greer, Director  
Sara Kyle, Director

**FROM:** Scott Trout *ST*  
Utility Rate Specialist

**SUBJECT:** **Docket 98-00597**  
Application of NA Communications, Inc. for a Certificate of  
Convenience and Necessity.

## **Supplemental Information**

**RECOMMENDATION:** Approve the application as supplemented.

On August 6, 1999, NA Communications, Inc. ("NA") filed supplemental information for the Authority's use in considering their application for CLEC authority. The supplemental information consisted of the consummated stock purchase agreement between NA, its parent company, Net Access, Inc. ("Net Access") and CFW, Inc. ("CFW").

Under the terms and conditions contained within the agreement, the following provisions apply to the operation and management of NetAccess through the year 2000.

- NetAccess will maintain service standards acceptable to CFW.
- NetAccess will operate through year 2000 as in the past, and in accordance with the 1999 and 2000 business plans.
- NetAccess' business plan for 2000 will be developed and must meet CFW and NetAccess approval.
- CFW will approve the Board of Directors of NetAccess and allow existing shareholders two seats on the board through year 2000.
- Capital expenditures, equipment leasing and acquisitions shall be in accordance with the 1999 and 2000 business plans.

The agreement states that CFW is to purchase 539,983 shares of NetAccess stock. The agreement also contains an earn-out provision. After audited financial statements for the year 2000 are prepared, the provision states that CFW will give the Shareholders of NetAccess an amount equal to four (4) times the total sales less the consolidated cost of goods sold and operating expenses, less \$6 million.

The agreement provides for the employment of Michael Davis, Kathy Davis, and Jay Cox, subject to negotiated employment contracts.

The agreement is specific in its requirement that NetAccess continue to operate under its own business plan, consistent with past practice. Further, NetAccess shall retain its separate corporate structure through year 2000.

At the hearing held on July 27, the Directors expressed concerns as to the technical abilities of NA's staff. NetAccess currently provides internet services to over 13,000 end-users, according to testimony presented. The technical capabilities necessary to offer this service are similar in nature to the technical abilities necessary to offer NA's proposed services. NA will rely upon the technical staff of NetAccess to provide the services they propose. Additionally, testimony presented by Michael Davis indicates that NA will be able to rely upon technical expertise of CFW, who according to Michael Davis' testimony, has employees with 120 years of collective telecommunications experience. Additionally, CFW has the financial resources to hire staff with the technical skills necessary to supplement NA's technical staff.

Based on our review of the consummated stock purchase agreement, Staff believes that the purchase by CFW does nothing to diminish NA's application. CFW's purchase of NetAccess actually strengthens NA's application for authority to provide services in Tennessee. No information was noted that would change our original recommendation to approve this application.

This recommendation has been discussed with Joe Werner and Darlene Standley.

c: David Waddell